

## **ISSUE INDEX**

*The Issue Index is arranged alphabetically. The issue headings appear on the left margin underlined and in bold. Below each heading you will find short, descriptive summaries of the Commission's rationale and holdings. Each summary, in turn, is followed by a citation to the applicable Commission decision.*

***NOTE: The summaries are not law. Please refer to the official Commission decisions for the actual text, rationale, and holdings.***

### **Age Discrimination**

When the Commission acts consistently in accordance with its rules and policies regarding test scheduling, application requirements, and rating reviews of education and experience, an unsuccessful candidate cannot claim that he was discriminated against or treated unfairly.

*Kanfold v. Idaho Personnel Comm'n*, IPC No. 96-6 (Decision and Order on Petition for Review, February 24, 1997)

### **Attorney Fees**

Where an agency acts in a manner consistent with advice from the state personnel director and a former attorney for the Commission, and where the facts and law are complex, the Commission cannot conclude that the agency's actions were so insupportable as to provide a basis for the award of attorney fees under Idaho Code § 12-117.

*Coburn v. Bureau of Occupational Licenses*, IPC No. 95-05 (Decision and Order on Petition for Review, April 2, 1997)

### **Burden of Proof**

The IPC rules mandate that in a Rule 190 discipline case, the department carries the burden of proof by a preponderance of the evidence. The department must prove at least one of the seventeen proper cause reasons for discipline, as listed in Rule 190, by a preponderance of the evidence.

*May v. Idaho Dep't of Health and Welfare*, IPC No. 96-01 (Decision and Order on Petition for Review, January 7, 1997)

In a claim of constructive discharge, the burden is upon the employee to present sufficient evidence to show that the resignation was involuntary.

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

### **Classified (Or Nonclassified) Status**

Absent a resignation or termination, an employee who is retiring remains a classified employee until the effective date of the retirement and is entitled to use accrued sick and annual leave to the extent that it would have otherwise been available.

*Coburn v. Bureau of Occupational Licenses*, IPC No. 95-05 (Decision and Order on Petition for Review, April 2, 1997)

An employee who walked off the job, telling her husband and other witnesses that she was quitting, telling her supervisors that she could no longer work under the conditions extant, and who turned in her equipment and who was advised by her supervisors that if she left they could do nothing for her, voluntarily resigned from her employment and was no longer a classified employee.

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

### **Constructive Discharge**

A constructive discharge is an involuntary resignation. The test is whether sufficient words or actions by the employer would logically lead a prudent person to believe that his tenure had been terminated.

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

Where the employee was not threatened with dismissal or other discipline, and where the events relied upon by the employee as evidence of constructive discharge were isolated in time, and were never grieved, and where the employee's supervisors endeavored to keep her from walking off the job, there is no constructive discharge.

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

## **Dismissal of Appeal**

Where the issue on appeal is that a classified employee was denied a promotion to an unclassified position, a motion by the respondent department to dismiss the appeal is appropriately granted where the issue has become moot because the appellant employee has resigned his classified position to accept a promotion to an unclassified position.

*Duncan v. Idaho State University*, IPC No. 97-07 (Decision and Order on Motion to Dismiss, November 14, 1997)

## **Due Process**

A classified state employee is not entitled to a full evidentiary hearing before a decision to discipline is made, but instead is entitled to: (1) notice of the contemplated action; (2) notice of basis of such action; (3) notice of the substance of the evidence supporting such action; and (4) an opportunity to respond to the notice before the decision is made.

*May v. Idaho Dep't of Health and Welfare*, IPC No. 96-01 (Decision and Order on Petition for Review, January 7, 1997)

The pre-termination opportunity to respond need not be elaborate. Something less than a full evidentiary hearing is sufficient prior to administrative action.

*May v. Idaho Dep't of Health and Welfare*, IPC No. 96-01 (Decision and Order on Petition for Review, January 7, 1997)

The employee received due process where, prior to receiving written notice of dismissal she (1) was notified that the department was considering a three-day suspension; (2) participated in a discussion regarding her failure to contact law enforcement and follow through on an investigation of reported child abuse in violation of department standards of practice, policies and procedures; (3) participated in an investigation of her actions and case notes which evidenced a failure to comply with standards of practice, policies and procedures; and (4) participated in a meeting where she was given an opportunity to respond to the allegations and provide additional information prior to the department's reaching a final decision.

*May v. Idaho Dep't of Health and Welfare*, IPC No. 96-01 (Decision and Order on Petition for Review, January 7, 1997)

Where an agency has taken no disciplinary action against an employee which would involve a property interest, due process protections do not attach and a failure by a department to comply with a procedural time line cannot result in a deprivation of due process or the denial of a right or benefit (due process) to which the employee was entitled.

*Christensen v. Dep't of Law Enforcement*, IPC No. 97-08 (Decision and Order on Petition for Review, December 18, 1997)

## **Evidence**

In the context of a civil, administrative hearing before the hearing officer, and in light of Idaho Code § 44-904 which permits law enforcement agencies and other political subdivisions to rely on polygraphy in an employment context, results of polygraph examinations are admissible.

*Morriss v. Idaho Dep't of Correction*, IPC No. 95-21 (Decision and Order on Petition for Review, October 20, 1997).

In the context of an administrative proceeding before the hearing officer, hearsay that is relevant and is not barred on other grounds by the Idaho Rules of Administrative Procedure is admissible and may be considered by the hearing officer in reaching a decision.

*Morriss v. Idaho Dep't of Correction*, IPC No. 95-21 (Decision and Order on Petition for Review, October 20, 1997).

Evidence of a decision in a related unemployment compensation case is inadmissible in an administrative proceeding regarding Rule 190 discipline.

*Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

Generally, determinations regarding the credibility of witnesses will be left to the hearing officer who has the opportunity to observe the demeanor of the witnesses.

*Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

## Jurisdiction

Idaho Code § 67-5316(1)(c) provides that interested persons may appeal any decision or action taken by the state personnel director or the personnel commission staff in the performance of their official duties.

*Kanfold v. Idaho Personnel Comm'n*, IPC No. 96-6 (Decision and Order on Petition for Review, February 24, 1997)

The Commission has no jurisdiction pursuant to Idaho Code §§ 67-5316 and -5317 to rule on a party's motion to disqualify the Office of the Attorney General from representing the Commission.

*Coburn v. Bureau of Occupational Licenses*, IPC No. 95-05 (Decision and Order on Petition for Review, April 2, 1997)

An employee who is retiring remains a classified employee until the effective date of the retirement and the Commission has jurisdiction to hear employee grievances which arise prior to that date.

*Coburn v. Bureau of Occupational Licenses*, IPC No. 95-05 (Decision and Order on Petition for Review, April 2, 1997)

Classified employees may grieve any matter except compensation (except as it relates to alleged inequities within an agency) and termination during the entrance probationary period. Idaho Code § 67-5315(1).

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

The jurisdiction of the Commission to hear appeals from grievances is strictly limited by Idaho Code § 67-5316(1) to appeals from *classified* employees.

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

The Commission has the power to determine whether it has jurisdiction over an appeal.

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

The jurisdiction of the Commission to hear appeals from grievances is strictly limited by Idaho Code § 67-5316 to matters involving “disciplinary dismissal, demotion or suspension, or classification.”

*Christensen v. Dep’t of Law Enforcement*, IPC No. 97-08 (Decision and Order on Petition for Review, December 18, 1997)

A letter of reprimand is not an appealable disciplinary action under Idaho Code § 67-5316.

*Christensen v. Dep’t of Law Enforcement*, IPC No. 97-08 (Decision and Order on Petition for Review, December 18, 1997)

Idaho Code § 67-5316 conveys jurisdiction to the Commission to hear appeals alleging the failure of an appointing authority to provide a right or benefit to which the employee is entitled by law.

*Christensen v. Dep’t of Law Enforcement*, IPC No. 97-08 (Decision and Order on Petition for Review, December 18, 1997)

### **Practice and Procedure Before the Commission**

The Commission may permit oral argument on petitions for review.

*Coler v. Idaho Dep’t of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

On petition for review, the Commission is limited to a review of the record and will not take additional evidence.

*Webster v. Idaho Dep’t of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

### **Practice and Procedure Before the Hearing Officer**

Upon the completion of the departmental grievance procedure, a classified employee may appeal matters enumerated in Idaho Code § 67-5316(1) to the Commission. Such appeals are assigned to a hearing officer who may allow motion and discovery practice and conduct an evidentiary hearing before entering a decision containing findings of fact and conclusions of law.

*Coler v. Idaho Dep’t of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

On appeal of non-disciplinary matters before the hearing officer, the burden of proof rests with the employee to prove his or her case by a preponderance of the evidence. IDAPA 28.01.01.201.06.

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

Once a hearing before the hearing officer has been closed, the hearing will not be reopened to allow the submission of additional evidence.

*Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

### **Reallocation**

A reallocation is a change of a class from the pay grade to which it is allocated in the compensation schedule to another pay grade of higher or lower entrance salary. When a class is reallocated to a lower salary level, the employee's salary is protected. Only the IPC has authority to reallocate a class.

*Harmon v. Idaho Dep't of Law Enforcement*, IPC No. 95-20 (Decision and Order on Petition for Review, January 7, 1997)

### **Reclassification**

Reclassification means a change of position from the class to which it is assigned to another class. Only the IPC has the authority to reclassify a position.

*Harmon v. Idaho Dep't of Law Enforcement*, IPC No. 95-20 (Decision and Order on Petition for Review, January 7, 1997)

### **Reduction in Force**

Appointing authorities of state departments have broad legal authority to abolish positions in their departments and to lay off employees when necessary because of a shortage of funds, shortage of work, reorganization of the agency or the abolishment of positions.

*Harmon v. Idaho Dep't of Law Enforcement*, IPC No. 95-20 (Decision and Order on Petition for Review, January 7, 1997)

An employee laid off when his position as deputy bureau chief, bureau of investigations was abolished was not entitled to compete for the position deputy bureau chief, bureau of criminal investigations where the two positions were different classes and the employee had never held permanent status in the latter class.

*Harmon v. Idaho Dep't of Law Enforcement*, IPC No. 95-20 (Decision and Order on Petition for Review, January 7, 1997)

When an employee opted to accept a voluntary demotion in lieu of layoff, the employee is not entitled to salary protection.

*Harmon v. Idaho Dep't of Law Enforcement*, IPC No. 95-20 (Decision and Order on Petition for Review, January 7, 1997)

### **Right or Benefit**

Idaho Code § 67-5316 permits appeals from the denial of a right or benefit to which the employee is entitled.

*Christensen v. Dep't of Law Enforcement*, IPC No. 97-08 (Decision and Order on Petition for Review, December 18, 1997)

### **Rule 190 Discipline**

In matters involving Rule 190 discipline, the issue before the Commission is limited to whether the department proved, by a preponderance of the evidence, that the employee was properly subject to discipline. Whether other employees should have been disciplined, were disciplined, or should have received a particular level of discipline is not within the Commission's purview.

*May v. Idaho Dep't of Health and Welfare*, IPC No. 96-01 (Decision and Order on Petition for Review, January 7, 1997)

So long as there is substantial evidence supporting the Hearing Officer's determination that an agency proved, by a preponderance of the evidence, that it had proper cause to impose discipline, the Commission will not second guess the choice of discipline.

*Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)



**Rule 190.01.b: Inefficiency, incompetency, or negligence in performing duties**

Negligence under Rule 190.01.b requires a showing that a duty has been breached.

*May v. Idaho Dep't of Health and Welfare*, IPC No. 96-01 (Decision and Order on Petition for Review, January 7, 1997)

The department's memorandum which provides employees guidance in responding to referrals, together with the department's "Standards of Practice" manual imposed a duty on the employee to contact law enforcement within twenty-four hours.

*May v. Idaho Dep't of Health and Welfare*, IPC No. 96-01 (Decision and Order on Petition for Review, January 7, 1997)

The employee's failure to contact law enforcement, to interview the baby-sitter or landlord to or make any attempt to locate the family constituted a breach of the duty imposed on the employee by the department's guidance memorandum and standard of practice manual.

*May v. Idaho Dep't of Health and Welfare*, IPC No. 96-01 (Decision and Order on Petition for Review, January 7, 1997)

**Rule 190.01.d: Refusal to accept a reasonable and proper assignment from an authorized supervisor**

A nurse who refused to admit a patient after being ordered to do so three times by a physician, and who repeatedly interrupted the physician in meetings to question the order, and who did not begin the patient admitting process for over two hours after the patient arrived was in violation of Rule 190.01.d.

*Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

**Rule 190.01.e: Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the department**

A nurse who drafts and widely distributes a letter of protest regarding a physician's order rather than bring questions or concerns regarding the order to the physician for final decision is in violation of Rule 190.01.e.

*Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

**Standard and Scope of Review**

When considering a petition for review, the Commission shall review the record of the proceeding below together with any briefs or transcripts submitted by the parties.

*Coburn v. Bureau of Occupational Licenses*, IPC No. 95-05 (Decision and Order on Petition for Review, April 2, 1997)

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

*Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

Findings of fact made by the hearing officer must be supported by substantial, competent evidence.

*Coburn v. Bureau of Occupational Licenses*, IPC No. 95-05 (Decision and Order on Petition for Review, April 2, 1997)

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

*Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

*Christensen v. Dep't of Law Enforcement*, IPC No. 97-08 (Decision and Order on Petition for Review, December 18, 1997)

The Commission exercises free review over issues of law.

*Coburn v. Bureau of Occupational Licenses*, IPC No. 95-05 (Decision and Order on Petition for Review, April 2, 1997)

*Coler v. Idaho Dep't of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

*Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

*Christensen v. Dep't of Law Enforcement*, IPC No. 97-08 (Decision and Order on Petition for Review, December 18, 1997)

On petition for review, the Commission may “affirm, reverse or modify the decision of the hearing officer, may remand the matter, or may dismiss it for lack of jurisdiction.” Idaho Code § 67-5317(1).

*Coburn v. Bureau of Occupational Licenses*, IPC No. 95-05 (Decision and Order on Petition for Review, April 2, 1997)

*Coler v. Idaho Dep’t of Correction*, IPC No. 95-16 (Decision and Order on Petition for Review, April 18, 1997)

*Webster v. Idaho Dep’t of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997)

*Christensen v. Dep’t of Law Enforcement*, IPC No. 97-08 (Decision and Order on Petition for Review, December 18, 1997)

### **Summary Judgment**

Summary judgments can be rendered if the pleadings on file, together with any affidavits, show that there is no genuine issue as to any material fact.

*Kaufold v. Idaho Personnel Comm’n*, IPC No. 96-6 (Decision and Order on Petition for Review, February 24, 1997)